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REPORT RE:

PRIVATE PATROL SERVICES AND OFFICERS

The Honorable City Council
Public Safety Committee
Room 415, City Hall East

Honorable Members:

The City Attorney's Office has been asked to address various issues regarding the City's regulation of Private Patrol Services through enforcement of Los Angeles Municipal Code § 52.34.

1. Whether Lamc § 52.34 Is Preempted by Preexisting State Law?

If a matter is of statewide concern (as opposed to a purely municipal affair), home rule charter cities (such as the City of Los Angeles) remain subject to and are controlled by applicable general state laws regardless of the provisions of their charters, if it is the intent and purpose of such general laws to occupy the field and exclude municipal regulation (i.e. - the preemption doctrine). [1] Accordingly, we must first determine whether § 52.34 regulates purely municipal affairs.

Section 52.34 regulates private patrol services and their patrol officers. Simply, private patrol services and their officers protect persons and property. "[A] private patrol officer is impressed with the badge of reliability and trustworthiness because of his community responsibility in supplying protection to persons and property."[2] Generally, a "municipal action which affects persons outside of the municipality" is not a purely municipal affair and

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[1] Cal. Const., art. XI, section 7 personifies the general police power provision applicable to all cities: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

[2] Stewart v. County of San Mateo, 246 Cal.App.2d 273, 288 (1966); citing People v. Melchor, 237 Cal.App.2d 685, 692 (1965).

thus "becomes to that extent a matter which the state is empowered to prohibit or regulate..."[3] Since, the regulation of private patrol services is primarily for the purpose of ensuring public safety and public safety is of statewide concern, it would appear that § 52.34 does not regulate a purely municipal subject.

Therefore, the next inquiry is whether § 52.34 is preempted by general state laws (specifically Business & Professions Code §§ 7580-7588). The California Constitution provides that a city may make and enforce within its limits all local and other ordinances and regulations that do not conflict with general laws. (See footnote 1.) "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void."[4] A conflict is said to exist if the local legislation either, "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication."[5]

Duplication: Local legislation is duplicative of general law when it is coextensive with it. In comparing § 52.34 with B&P §§ 7580-7588, it appears that the ordinance is broader in scope than the state statute. Although both the ordinance and the state statute provide a comprehensive scheme for licensing, registering, regulating and disciplining private patrol operators, the ordinance goes a little further. For example, the ordinance covers surety bonds, a general insurance policy requirement, etc. Thus, it can be said that the statute and ordinance are not coextensive with each other. Rather, the requirements provided for in the ordinance are supplementary to the state law.[6] Therefore, it appears there is not a conflict which would result in § 52.34 being preempted by the state statutes.

Contradiction: "An ordinance contradicts state law if it is inimical to state law; i.e., it penalizes conduct that state law expressly authorizes or permits conduct which state law

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[3] Domar Electric Inc. v. City of Los Angeles, 41 Cal.App.4th 810, 828 (1995).

[4] Sherwin-Williams Co. v. City of Los Angeles, 4 Cal.4th 893, 897 (1993) quoting from Candid Enterprises Inc. v. Grossmont Union High School Dist., 39 Cal.3d 878, 885 (1985).

[5] California Rifle and Pistol Association, Inc. v. City of West Hollywood, 66 Cal.App.4th 1302, 1310 (1998) quoting from Sherwin-Williams Co., supra, 4 Cal.4th at p. 897.

[6] See Pipoly v. Benson, 20 Cal.2d 366, 370-371 (1942), where the California Supreme Court held that when local law is *identical* to state law, there is an "inevitable conflict of jurisdiction" and because of this conflict the local law is not valid "supplementary legislation" but conflicts with state law and is invalid.

forbids."[7] It appears that in certain provisions the ordinance does contradict the state statutes. Therefore, the ordinance would be preempted in those areas where it contradicts the statutes. Consequently, it is recommended that the ordinance be amended to eliminate any provisions that contradict state law.

Entry into an area fully occupied by the statute: "[L]ocal legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area, ... or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.'"[8]

Express Intent: The Legislature did not expressly manifest an intent to fully occupy the area of private security services when it passed B & P §§ 7580-7588. This is evidenced by language found in the statute itself. Sections 7582.5 and 7583.38 of the statute allow local regulations to be imposed. Section 7582.5 deals with local regulations regarding registration of any street patrol service or street patrol special officer. Section 7583.38 pertains to local regulations for uniforms, insignias and vehicles. Since the state statute does allow for local regulations, express legislative intent to preempt is absent.

Implied Intent: There is a general rule that implied preemption can properly be found only when the circumstances clearly indicate a legislative intent to preempt. "To determine whether the Legislature has preempted a certain field, one must question whether the Legislature 'intended to occupy a particular field to the exclusion of all local regulation.'" This intent is determined by analyzing "the state legislation in terms of its language, purpose,

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[7] Suter v. City of Lafayette, 57 Cal.App.4th 1109, 1123 (1997) quoting from Bravo Vending v. City of Los Angeles, 16 Cal.App.4th 383, 396-397 (1993).

[8] Sherwin-Williams Co., supra, 4 Cal.4th at p. 898 quoting from In re Hubbard, 62 Cal.2d 119, 128 (1964), overruled on another point in Bishop v. City of San Jose, 1 Cal.3d 56, 63, fn. 6 (1969).

and scope, and the facts and circumstances upon which it was intended to operate."[9]

The purpose of the state statutes, according to an analysis prepared by the Senate Rules Committee on August 23, 1994, was to "repeal the existing Private Investigator Act and recast it to re-enact, reorganize and revise those provisions into two separate acts: (1) the Private Investigator Act for the licensing and regulation of private investigators, and (2) the Private Security Services Act for the licensing of and regulation of private patrol operators and security guards, armored contract carriers, and firearms and baton training facilities."[10] Furthermore, the state statutes provides that "... the primary purpose of regulating and licensing armed security guards in this state is to protect the public from the unnecessary and improper use of force." Therefore, it appears that the goal for enacting the state statute was to provide an adequate means to protect the public health, safety and welfare. A careful reading of the state statute's purpose and scope indicates that the Legislature did not intend to preempt local regulation.

Moreover, a review of the three basic indicators of implied preemption demonstrates that there is no implied preemption here. The state statute does give a fairly comprehensive scheme for regulating private security services; however it also specifically allows for local regulation, as evidenced by Sections 7582.5 and 7583.38. This in itself "shows that, rather than intending to deprive municipalities of their police power to regulate [private security services], the Legislature [was] cautious about depriving [the] local municipalit[y] of aspects of [its] constitutional police power to deal with local conditions."[11] The power of local government to regulate private patrol officers is clearly within the scope of police power delegated to local government (California Constitution, Art. XI, § 7) and was further recognized by the Legislature when it provided in Section 7582.5 that local government may impose such regulations upon private patrol operators, within the exercise of its police power. Therefore, while California has enacted a comprehensive scheme of legislation relating to the licensing, registration, regulation and disciplining of private patrol operators, § 7582.5(a) expressly provides that the regulatory provisions of the statute are not intended to be exclusive

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[9] Miller v. Murphy, 143 Cal.App.3d 337, 341 (1983), citing Stewart, supra, 246 Cal.App.2d at p. 282.

[10] In comparison, the purpose of § 52.34 was twofold: (1) To defranchise private patrols, and (2) To safeguard the community with a comprehensive law to prevent unscrupulous operators from entering that field.

[11] California Rifle and Pistol Association, Inc., supra, 66 Cal.App.4th at p. 1318.

in their application to street patrol special officers.[12] Moreover, there are additional aspects of private security services (such as the requirement of a surety bond, a general insurance policy requirement; etc.) that are not addressed by the state statute.[13] As the California Supreme Court has aptly noted: "The state in its laws deals with all of its territory and all of its people. The exactions which it prescribes operate (except in municipal affairs) upon the people of the state, urban and rural, but it may often, and does often happen that the requirements which the state sees fit to impose may not be adequate to meet the demands of densely populated municipalities; so that it becomes proper and even necessary for municipalities to add to state regulations provisions adapted to their special requirements."[14]

As the above analysis indicates, it is the Legislature's intent to preempt that is controlling. In the instant matter, there is nothing to suggest that the Legislature intended to preempt the field of private patrol services. Therefore, it is our conclusion that the Legislature did not expressly or impliedly intend to preempt the field of private security services when it enacted B&P §§ 7580-7588.

2. Whether the requirement that private patrol services pay a permit fee can be eliminated and if so, what action would need to be taken to do so?

The requirement that private patrol services obtain a permit from the City is found in LAMC § 52.34. Subsection b(2)A of § 52.34 provides that "[a]n application for a permit to operate, maintain and conduct a private patrol service business in the City shall be filed together with an application fee with the Permit Section of the City Clerk's Office on forms supplied by the City." The amount of the application fee is set forth in LAMC § 103.12. If the Council, for whatever reason, wished to eliminate the permit application fee for private

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[12] Stewart, supra, 246 Cal.App.2d at p. 281- 282.

[13] "The general fact that state legislation concentrates on specific areas, and leaves related areas untouched ..., shows a legislative intent to permit local governments to continue to apply their police power according to the particular needs of their communities in areas not specifically preempted." (California Rifle and Pistol Association, Inc., supra, 66 Cal.App.4th at p. 1318).

[14] Galvan v. The Superior Court of the City and County of San Francisco, 70 Cal.2d 851, 864 (1969)); citing to In re Hoffman, supra, 155 Cal. at p. 118. Also see Bell v. City of Mountain View, supra, 66 Cal.App.3d at p. 339 ["Where the statute contains language indicating that the Legislature did not intend its regulations to be exclusive, the general rule permitting additional supplementary local regulations has been applied."]

patrol services, the Council would need to amend LAMC §§ 52.34(b)(2)A and 103.12.

Conclusion

In conclusion, the City Attorney's Office remains prepared to assist the Public Safety Committee in reviewing LAMC § 52.34 and the Police Commission Rules and Regulations governing private patrol services and private patrol officers.

Respectfully submitted,

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